

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CUVIELLO, et. al.,

No. C 06-05517 MHP

Plaintiffs,

MEMORANDUM & ORDER

v.

Re: Plaintiffs' Motion for Sanctions

CITY OF OAKLAND, et. al.,

Defendants.

On September 8, 2006 plaintiffs Joseph CuvIELLO and Deniz Bolbol filed an action against the City of Oakland, Alameda County, Oakland-Alameda County Coliseum Authority, Oakland Coliseum Joint Venture, L.L.C., SMG—a foreign corporation, Oakland Police Department Officers R. Valladon and R. Villegas and Oakland Coliseum Assistant Security Manager Leroy “Skeet” Ellis claiming violations of their civil rights. This court issued a preliminary injunction. Plaintiffs have now moved for sanctions against defendants for an alleged violation of the preliminary injunction. Having considered the parties’ arguments and submissions and for the reasons set forth below, the court rules as follows.

BACKGROUND

On August 14, 2007 this court granted plaintiffs a preliminary injunction with respect to circus events scheduled for later that week at the Oakland Coliseum. See Docket No. 47 (hereinafter “Injunction Order”). The order enjoined defendants from: “(1) requiring Plaintiffs to purchase a ticket in order to enter the north ramp of the Coliseum and videotape circus animals from the north ramp landing; (2) refusing to permit Plaintiffs and up to four additional persons acting in concert with Plaintiffs to stand at or near the railway of the north ramp landing in order to photograph or

1 videotape circus animals; and (3) harassing or preventing Plaintiffs from reaching the north ramp
2 landing, absent a law violation.”¹ Id. at 10–11.

3 From August 16 to 19, 2007 the Ringling Brothers Circus held performances at the Oakland
4 Coliseum (“Coliseum”). Cuiello Dec. ¶ 6. During this time, plaintiffs sought to exercise their right
5 to free speech by videotaping circus animals from a vantage point on the north landing above the
6 arena entrance.² Id. ¶¶ 3, 6; Bolbol Dec. ¶ 3.

7 The north landing could generally be reached via five routes: the east and west staircases,
8 the east and west ramps and a walkway leading from the south entrance. Docket No. 72,
9 February 5, 2008 Evidentiary Hearing Transcript (hereinafter “Tr.”) at 57:1–13. The east ramp was
10 open to the public at all times during the circus. Id. at 36, 101–02, 177–78, 203. However, event
11 personnel sometimes blocked the east staircase. Id. at 99–100. The west staircase was closed
12 throughout the duration of the event. See Pl.’s Exh. 3, Clips 1–21. It is unclear whether the west
13 ramp was closed or open to the public throughout the duration of the circus. The court conjectures
14 that plaintiffs were not able to access the north landing via the walkway from the south entrance,
15 since defendants failed to raise such an argument.

16 In preparation for the event, Oakland-Alameda Coliseum Authority contracted with Oakland
17 Coliseum Joint Venture, L.L.C., a subsidiary of SMG, to provide security guards during the four day
18 event period. Tr. at 93; Docket No. 60, First Amended Complaint, ¶ 12. The attorney representing
19 defendants, Ed Baldwin, notified Coliseum Assistant Security Manager Ellis of the injunction on
20 August 15, 2007, the day before opening night. Tr. at 95–96, 196. Ellis briefed his security force an
21 hour prior to performances on each day of the circus based on his understanding of the injunction.
22 Id. at 120–22.

23 Ringling Brother Circus also hired additional police officers, employed by City of Oakland,
24 to supplement security. Id. at 94, 140:19–22. Sergeant Patrick Gonzales, who supervised a detail of
25 officers during two days of the event, testified that he had no knowledge of the injunction prior to or
26 upon his arrival at the Coliseum.³ Id. at 140, 145, 148–51. Gonzales first became aware of the court
27 order when Cuiello handed him a copy on the third day of the circus, Saturday, August 18.
28

1
2 A. Pre-Event Occurrences

3 Circus animals were to enter the Coliseum through a tunnel at the north entrance of the
4 arena. See Injunction Order at 2:14–17. The tunnel is flanked by two staircases, one on each side,
5 which lead from the north parking lot to a twenty foot landing directly above the tunnel entrance
6 (“north landing”). See id. at 2:12–14; Pl.’s Exh. 3, Clips 3, 5. Next to each staircase are ramps, the
7 east and west ramp, which also lead to the north landing. Id. Plaintiffs sought to position
8 themselves on the north landing to overlook the tunnel and film the animals as they entered the
9 arena. Id.

10 Prior to opening night, event personnel erected a mobile barrier on the north landing, parallel
11 to the railing which borders the edge of the north landing and directly overlooks the tunnel entrance,
12 to restrict patrons from accessing an area approximately twelve to sixteen feet long and four to six
13 feet deep (“railway barrier”). Ellis Dec. ¶ 6; Tr. at 125:4–7; Injunction Order at 2:13–14. The
14 railway barrier was constructed using portable bicycle racks and yellow tape and remained standing
15 throughout the duration of the circus. Tr. at 17:12–21, 114:17–24. Security guards were given strict
16 instructions to keep patrons out of this restricted area. Id. at 111:3–8.

17
18 B. Day One, Thursday

19 On Thursday, August 16, the first day of the circus, the east staircase and east ramp leading
20 to the north landing were both open for public use. Pl.’s Exh. 3, Clips 3, 5, 6. Upon reaching the
21 landing, plaintiffs physically moved the railway barrier on the north landing to film and were told by
22 security guards that they were not permitted in that area. Tr. at 14–15; Cuvillo Dec. ¶ 7. Bolbol
23 testified that she called upon Baldwin, who witnessed the incident, to rectify the misunderstanding;
24 however, Baldwin was unresponsive. Tr. at 14–15; Pl.’s Exh. 3, Clip 1. In contrast, Ellis testified
25 that after being called to the scene, he met with Baldwin, who requested that plaintiffs be given
26 special permission to stand inside the movable barrier. Ellis Dec. ¶ 7.

27 Plaintiffs were subsequently granted special access to the restricted area, which allowed them
28 to stand next to the railing at the very edge of the landing and overlook the tunnel entrance below.

1 Id. Ellis testified that he communicated this policy to all on-duty security personnel over dispatch
2 radio. Tr. at 104:22–25. However, it is unclear whether the policy was communicated to new
3 guards on succeeding nights or whether the policy was even intended to remain for the duration of
4 the four-day event. Id. at 105, 199; Ellis Dec. ¶ 7. Notwithstanding this brief initial opposition from
5 security, plaintiffs successfully videotaped the circus animals from within the restricted area at the
6 railway on Thursday, August 16. Id. at 15:15–17, 61:9; Pl.’s Exh. 3, Clip 4.

7
8 C. Day Two, Friday

9 On Friday, August 17, the east staircase leading to the north landing was closed to the public;
10 however, the east ramp was open for public use. Pl.’s Exh. 3, Clips 8, 9, 10. Plaintiffs testified that
11 despite a barrier restricting access to the east staircase, which plaintiffs moved or security guards
12 moved for them, plaintiffs used the east staircase on this day without issue. CuvIELLO Dec. ¶ 9; Tr.
13 at 17:23–25. Plaintiffs had no trouble videotaping from within the restricted landing zone. Tr.
14 at 18–19, 62.

15
16 D. Day Three, Saturday

17 On Saturday, August 18, the east staircase leading to the north landing was closed; however,
18 the east ramp was open for public use. Pl.’s Exh. 3, Clip 11. CuvIELLO utilized the east ramp to
19 access the north landing. Tr. at 81:14–16. Bolbol, however, elected to use the closed east staircase.
20 Id. at 20–21; Pl.’s Exh. 3, Clips 11, 12. Security guards positioned at the bottom of the stairs
21 instructed Bolbol to use the open east ramp. See Pl.’s Exh. 3, Clips 11, 12. Bolbol resisted until a
22 female security guard arrived at the scene and told the guards to let Bolbol pass. Id. At the top of
23 the stairs, Bolbol encountered a second barrier and again received instructions from the guards to
24 make use of the open east ramp. Id. Bolbol’s associate, CuvIELLO, then physically moved the barrier
25 such that Bolbol could pass through, but only after initiating a physical struggle with security
26 personnel. Tr. at 22; Pl.’s Exh. 3, Clip 11. Bolbol then videotaped from within the restricted area
27 for a short time, eventually descending via the east stairway, where she moved the barrier without
28 issue. Tr. at 22–25.

1 As Bolbol ascended the stairs a second time, security guards blocked the landing. Id.; Pl.'s
2 Exh. 3, Clip 14. The guards reiterated instructions to use the east ramp. Pl.'s Exh. 3, Clips 14–17.
3 The situation escalated into an argument, during which time plaintiffs continued to videotape the
4 guards and, at one point, held their camera inches away from the faces of Sergeant Gonzales and
5 other security personnel. Pl.'s Exh. 3, Clips 15–18, 21. The guards teased Cuiello regarding his
6 personal hygiene and feet. Id. At one point, the guards commented that they “don’t make threats,
7 only promises.” Id. One guard called Cuiello a “faggot” after Cuiello put his camera close to the
8 guard’s face, interrogated him and told him to think of a good answer, but not to hurt himself. Id.
9 After ten to fifteen minutes, Bolbol descended the stairs and walked up the east ramp to the north
10 landing. Tr. at 27. Following this incident, Sergeant Gonzales allowed plaintiffs to use the east
11 staircase.⁴ Pl.'s Exh. 3, Clip 20; Tr. at 29. Plaintiffs encountered no further issues with their use of
12 the east staircase for the remainder of the day, except for one instance when “Buzz” Golpin
13 commented to Bolbol when she moved the staircase barrier, “where are you going, Deniz? You are
14 just trying to make someone beat your ass.” Pl.'s Exh. 3, Clip 22; Tr. at 30–32.

15
16 E. Day Four, Sunday

17 On Sunday, August 19, the last day of the circus, the east staircase leading to the north
18 landing was again closed; however, the east ramp was open for public use. Pl.'s Exh. 3, Clip 23.
19 Despite the barriers, plaintiffs freely used the east staircase and filmed within the barricade on the
20 north landing railway. Tr. at 33:3–7. Around nine in the evening, security guard Wetherbee told
21 Cuiello that he was not allowed to stand within the restricted area. Pl.'s Exh. 3, Clip 24.
22 Wetherbee proceeded to throw Cuiello’s bag of food out of the area and grab the pole upon which
23 Cuiello’s camera was attached, shaking it before walking away. Id. No further incidents between
24 plaintiffs and security personnel occurred on that day. Tr. at 71:1–25.

1 F. Summary

2 In sum, plaintiffs could at all times reach the north landing via at least one of five access
3 routes—the east ramp. Id. at 36, 101–02, 177–78, 203. Plaintiffs were only denied access to the
4 north landing via the east staircase at certain times on particular days. See Pl.’s Exh. 3,
5 Clips 1-21. Security personnel never denied plaintiffs physical access to film from within the area
6 guarded by the blockade at the north landing. Tr. at 33:8–19, 47–8, 74:9–13. However, security
7 guards reproached plaintiffs numerous times for standing within this restricted zone. Id. at
8 84:19–25. Nevertheless, event personnel intervened almost immediately to confirm plaintiffs’
9 access. Id.

10
11 LEGAL STANDARD

12 The standard for finding a party in civil contempt is well settled: “the moving party has the
13 burden of showing by clear and convincing evidence that the [nonmoving party] violated a specific
14 and definite order of the court.” FTC v. Affordable Media, LLC, 179 F.3d 1228, 1239 (9th Cir.
15 1999) (quoting Stone v. City & County of San Francisco, 968 F.2d 850, 856 n.9 (9th Cir. 1992)).

16 If a party is held to be in civil contempt, the decision as to whether sanctions should be
17 imposed lies within the sound discretion of the district court. See Jerry’s Famous Deli, Inc. v.
18 Papanicolaou, 383 F.3d 998, 1004 (9th Cir. 2004).

19
20 DISCUSSION

21 Plaintiffs argue that defendants violated this court’s order by: (1) repeatedly harassing
22 plaintiffs; (2) restricting access to the east staircase; and (3) restricting access to the railing on the
23 north landing. Plaintiffs also make three additional allegations that: (1) defendants failed to
24 effectively communicate the existence of the injunction and its terms to event staff; (2) defendants
25 placed arbitrary and inconsistent restrictions on access to the railway and east staircase in order to
26 subvert plaintiffs’ videotaping activity and appease Ringling Brothers Circus; (3) and Sergeant
27 Gonzales disrespected plaintiffs by failing to enforce the injunction.

1
2 A. Harassment

3 Harassment is defined as “words, conduct or action that . . . causes substantial emotional
4 distress . . . and serves no legitimate purpose.” Black’s Law Dictionary 733 (8th ed. 2004).

5 Plaintiffs allege several incidents of harassment. The first involves the series of events on
6 August 18th, during which defendants inconsistently and arbitrarily imposed restrictions on
7 plaintiffs’ use of the east staircase. In arguing that such limitations constitute harassment, plaintiffs
8 neglect the fact that at all times during the four-day event, they had at their disposal at least one
9 viable, alternative route to the landing—the east ramp. See Tr. at 36, 101–02, 177–78. Therefore,
10 any allegation that the closure of the east stairway caused emotional distress is unpersuasive.

11 Plaintiffs next allege that sporadic warnings from security personnel to leave the restricted
12 area within the railway barrier on the north landing, coupled with CuvIELLO’s incident with security
13 guard Wetherbee on August 19, constituted harassment. Although more compelling, this argument
14 also fails to satisfy the threshold requirement of substantial emotional distress. Plaintiffs concede
15 that they were never physically denied access to the restricted area. Id. at 74:9–13. Bolbol even
16 described the resistance she encountered as “incidental” since plaintiffs were always able to film at
17 or near the railway. Id. at 33:8–19. Moreover, the situation with Wetherbee lasted under a minute,
18 resulted in no damage to CuvIELLO’s property, and concluded with Wetherbee’s retreat and no further
19 disruptions. Id. at 75–76, 85; Pl.’s Exh. 3, Clips 1, 24. Thus, plaintiffs’ contention that defendants
20 harassed plaintiffs while guarding the railway barrier is similarly unpersuasive.

21 Lastly, plaintiffs allege they were harassed when defendants insulted, threatened and
22 intimidated plaintiffs during the August 18 incident on the east staircase. Indeed, security guards
23 were extremely discourteous to plaintiffs when joking about plaintiffs’ personal hygiene and feet
24 and calling CuvIELLO a “faggot.” See Pl.’s Exh. 3, Clip 21. The court strongly admonishes against
25 this behavior. However, the evidence also demonstrates that plaintiffs provoked tension by holding
26 their cameras only inches away from the faces of Sergeant Gonzales and security personnel while
27 questioning and chastising them about their job, orders and wages. See id. (video clip depicting
28 plaintiffs’ comments, “Are you getting time and a half, what is it \$70 an hour? . . . Are you making a

1 mockery of the court? . . . You have no respect for Judge Patel, is that right?"). Thus, plaintiffs
2 cannot demonstrate that defendants caused plaintiffs substantial emotional distress for no legitimate
3 purpose.

4
5 B. Access to East Stairway

6 Second, plaintiffs argue that defendants violated the injunction by restricting access to the
7 east staircase. Whether such restrictions violate California's Liberty of Speech Clause, as plaintiffs
8 allege, is a question beyond the scope of the present motion. The issue here is whether blocking the
9 stairs violated the terms of the injunction, not whether such restriction constitutes an illegal
10 limitation on free speech. The injunction order gave plaintiffs a right to "enter the north ramp and
11 videotape at the north ramp landing" and enjoined defendants from "preventing Plaintiffs from
12 reaching the north ramp landing." Injunction Order at 10–11. Further, although the order explicitly
13 deemed the north ramp and north ramp landing to be public fora, it remained silent with respect to
14 the east staircase.⁵ See generally Injunction Order. The court finds no ambiguity in this language,
15 especially in light of plaintiffs' narrow request to "videotape from only the north ramp landing itself,
16 and not the north ramp, and [to] use the north ramp merely to reach the landing." Id. at 7 n.5
17 (plaintiffs' testimony at the preliminary injunction hearing). Here, defendants at no time prevented
18 plaintiffs from reaching the north landing. Both Cuiello and Bolbol had ample opportunity to use
19 the open east ramp at all times throughout the duration of the circus. See Tr. at 36, 101–02, 177–78.
20 Consequently, plaintiffs cannot show with clear and convincing evidence that the defendants
21 violated the injunction by restricting access to the east staircase.⁶

22
23 C. Access to North Landing

24 Third, plaintiffs argue that defendants violated the injunction by restricting access to the
25 railway on the north landing. The injunction unambiguously gave plaintiffs a right "to stand at or
26 near the railway of the north ramp landing in order to photograph or videotape." See Injunction
27 Order at 10–11. Plaintiffs concede that at no time during the four-day event did defendants
28 physically deny plaintiffs access to the restricted area at or near the railway. Tr. at 33:8–19 (Bolbol

1 testified that “[t]here were always people telling me I could not do or be where I was, but they were
2 incidental because I was able to proceed”), 74:9–13 (CuvIELlo testified that he was never physically
3 denied access to the north landing at or near the railway during the entire four-day circus).
4 Plaintiffs’ testimony is sufficient to establish that defendants did not violate the injunction.⁷

5
6 D. Other Allegations

7 First, plaintiffs’ allegation that defendants did not take the injunction seriously is, in the
8 absence of a violation, of no import with respect to the present motion. Nevertheless, the court
9 recognizes that defendants’ lackluster effort to ensure that all event staff were made aware of the
10 injunction largely exacerbated tensions between plaintiffs and security guards. Although Ellis
11 testified that on August 16 he informed event staff over dispatch radio that plaintiffs had permission
12 to stand within the railway barrier, CuvIELlo’s encounter with security guard Wetherbee three days
13 later, on August 19, demonstrates that this information was not reiterated to guards on succeeding
14 nights. Tr. at 104:22–25; see Pl.’s Exh. 3, Clip 24. Sergeant Gonzales further testified that no
15 formal briefing process exists for officers hired to work at the Coliseum, and thus he was not aware
16 of the injunction until the last day of the circus. Tr. at 147–51. Even the Captain of Security,
17 “Buzz” Golphin, was not informed of the injunction until the first incident between plaintiffs and
18 security personnel at the railway barrier on August 16. Id. at 215–16. Although the ignorance of
19 event staff did not manifest itself in a violation of the injunction during the 2007 circus, it very well
20 could have. Defendants would be well advised to institute procedures that inform personnel of such
21 injunctions in the future.

22 Second, plaintiffs’ contention that limitations on access to the north landing and east
23 staircase were arbitrary, capricious and ultimately promulgated to subvert plaintiffs’ videotaping and
24 appease Ringling Brothers is also irrelevant given the court’s finding above. Although defendants’
25 behavior may well raise valid First Amendment concerns, such questions are outside the scope of the
26 present motion. The court, however, notes that defendants’ policy regarding the stairs was neither
27 uniformly implemented nor consistently enforced. On August 16, the first day of the circus, the east
28 stairway was open for public use, yet on all subsequent days the same stairway was closed. See Pl.’s

1 Exh. 3, Clips 3, 5, 6, 8–11. Security personnel sporadically barred plaintiffs from accessing the east
2 stairway, yet on other occasions granted permission. See Pl.’s Exh. 3, Clips 11, 12 (security guards
3 denying Bolbol access to the stairs), 20, 22 (Sergeant Gonzales allowing plaintiffs to access the
4 stairs). Further, defendants’ purported justification for closing the east staircase, the safety of
5 patrons and animals, is suspect in light of this court’s prior finding that such concerns were
6 speculative. See Injunction Order at 7:4–5.

7 Finally, plaintiffs’ allegation that Sergeant Gonzalez disrespected plaintiffs by failing to
8 enforce the injunction is moot in light of a determination that defendants did not violate the
9 August 14 injunction.

10
11 CONCLUSION

12 For the foregoing reasons, plaintiffs’ motion for sanctions is DENIED.

13 IT IS SO ORDERED.

14
15 Dated: June 20, 2008



MARILYN HALL PATEL
United States District Court Judge
Northern District of California

ENDNOTES

1. Although plaintiffs do not argue that “harassing or preventing Plaintiffs from reaching the north ramp landing” is ambiguous, a live question of interpretation exists.
2. Plaintiffs are members of Citizens for Cruelty-Free Entertainment, a San Francisco Bay Area group dedicated to the humane treatment of animals and to educating the public about the abuse and mistreatment of animals in circuses. See Docket No. 60, First Amended Complaint, ¶ 25.
3. It is unclear on which two days Gonzales worked at the circus. Gonzales confirmed that he was on-duty on the third day, August 18. However, it is unclear whether this was his first or second day on duty.
4. Sergeant Gonzales testified that he allowed plaintiffs to access the east stairway after speaking with Sergeant Espinoza, head of Oakland Police’s Special Events department, about his concern regarding the escalating situation. Tr. at 141, 173–6; Pl.’s Exh. 3, Clip 20.
5. The east ramp joins the west ramp at the top of the north entrance to create the north landing. Hence, the injunction employs the term “north ramp” to refer to the east ramp at the north entrance.
6. In the future, plaintiffs are advised to seek a more specific injunction to preempt such disputes.
7. Plaintiffs’ argument that the act of placing a barrier on the landing constitutes an illegal limitation on plaintiffs’ right to free speech is outside the scope of this motion and order.